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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

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BLM Director's Response to the Alaska Governor's Appeal of the BLM Alaska State Director's Governor's Consistency Review Determination

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is publishing this notice to explain why the BLM Director is rejecting the Alaska Governor's recommendations regarding the Environmental Assessment and Finding of No Significant Impact for the Delta River Special Recreation Management Area (SRMA) Plan and East Alaska Resource Management Plan (EARMP) Amendment.

FOR FURTHER INFORMATION: Contact Joe Stout, Division Chief for Decision Support, Planning and NEPA, telephone 202-912-7275; address 1849 C Street N.W. Room 2134LM Washington, DC 20240; e-mail j2stout@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. A copy of the Delta River SRMA Plan and EARMP are available on the BLM-Alaska Web site at: www.blm.gov/ak.

SUPPLEMENTARY INFORMATION: On July 25, 2011, the BLM released the Environmental Assessment (EA) and Finding of No Significant Impact for the Delta River SRMA Plan and the EARMF Amendment. On September 20, 2011, the Governor of Alaska submitted a Governor's Consistency Review Finding of Inconsistency for the EA and Finding of No Significant Impact for the Delta River SRMA Plan and EARMF Amendment (Finding) to the BLM Alaska State Director. The State Director determined the Governor's Finding was outside the scope of the Governor's Consistency Review process and did not accept the Governor's recommendations. A written response was sent to the Governor on March 28, 2012, addressing issues raised in the Governor's Finding, and informing him of clarifications made to the BLM's Decision Record for the project.

On April 27, 2012, the Governor appealed the State Director's decision not to accept his recommendations to the BLM Director. The BLM Director issued a final response to the Governor affirming the State Director's decision and made minor revisions to the final decision record for the project to address some of the Governor's concerns. Pursuant to 43 CFR 1610.3-2, the substantive portions of the Director's response to the Governor are printed as follows.

"Your letter contained an April 27, 2012, appeal of the BLM Alaska State Director's response to your Finding of Inconsistency for the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Delta River Special Recreation Management Area (SRMA) Plan and East Alaska Resource Management Plan Amendment Plan (EARMF). Your letter also responded to the Director's Protest Resolution Report, dated December 9, 2011. I have carefully considered your appeal and

response, and associated recommendations. A detailed response to the issues raised is enclosed; you will note that we have adopted several of your recommendations as part of the Protest Resolution Process.

In response to your appeal, under the Federal Land Policy and Management Act (FLPMA) and its implementing regulations, the scope of the appeal process is narrow, as is the Governor's Consistency Review process. Pursuant to 43 CFR 1610.3-2(e), in reviewing your appeal, I must first consider whether you have raised actual inconsistencies with State or local plans, policies, or programs. If such inconsistencies are raised, I would then consider whether your recommendations address the inconsistencies and provide for a reasonable balance between the national interest and the State of Alaska's interest.

Your appeal states that the Plan does not comply with the requirement of 43 CFR 1610.3-2(a) and (b) for BLM land use plans to be consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands. The appeal maintains your position that the Plan does not meet this standard because it is inconsistent with various provisions of the Alaska National Interest Lands Conservation Act (ANILCA) and its implementing regulations, as well as the Wild and Scenic Rivers Act. The consistency review and appeal process, as set forth in 43 CFR 1610.3-2 (d) and (e) applies to the identification of known inconsistencies with State or local plans, policies, or programs. After carefully considering the points raised in the appeal, I have concluded that the appeal has not identified any known inconsistencies with State or local plans, policies, or programs. Therefore, I affirm the BLM Alaska State Director's response to your Finding of Inconsistency.

Also, please note that BLM Assistant Director Edwin Roberson, on my behalf, gave due consideration to several of the State's concerns with the Plan in the December 9, 2011, Director's Protest Resolution Report, as reflected in his letter to the Alaska Attorney General's Office, dated March 28, 2012. I refer you to the findings in the Director's Protest Resolution Report for the BLM response to these concerns. The Report can be found at:

http://www.blm.gov/wo/st/en/prog/planning/planning_overview/protest_resolution/protest_resolution_reports.html.”

The following attachment also was provided as part of the response:

“BLM Response to Issues Raised by Governor Sean Parnell

1. Recommending the public refrain from legally allowed activities is inconsistent with ANILCA Section 1110 and Department of the Interior implementing regulations at 36 CFR § 36.11.

While the BLM intends to manage certain segments of the Delta River Special Recreation Management Area to afford opportunities for nonmotorized user experiences, your concerns regarding the BLM recommending that the public refrain from motorized boating and airplane landings are duly noted. As described in the Director's Protest Resolution Report, the BLM has decided to remove motorized boating and airplane landings as “outcomes to be avoided” for the Tangle Lakes Zone 1 RMZ and the Delta River Zone 4 RMZ. If in the future the BLM finds that such use would be detrimental to the resource values of the area, the BLM will take action under 43 CFR 36.11(h) or other applicable law to restrict such activities.

2. Group size limitations must be implemented by regulation consistent with ANILCA Section 1110(a) and Department of the Interior implementing regulation at 43 CFR § 36.11.

Camp group size limits do not fall within the scope of Section 1110(a) of ANILCA.

Section 1110(a) and its implementing regulation 43 CFR 36.11 solely pertain to methods of transportation. The BLM's establishment of the group size limit allows the BLM authorized officer to permit exceptions for larger groups where appropriate, and is consistent with Section 302(b) of FLPMA, which provides the Secretary of the Interior with authority to regulate such uses through published rules or other instruments as the Secretary deems appropriate.

3. Following the direction in ANILCA Section 810 to determine whether subsistence access restrictions need to be implemented by regulation pursuant to ANILCA Section 811 is a misinterpretation of ANILCA and is inconsistent with the regulatory process followed by other Department of the Interior land management agencies.

I agree that the BLM Alaska State Director's response did not clearly differentiate between Sections 810 and 811 of ANILCA. The BLM will clarify that the standard found in 810 does not apply to 811 in the Decision Record and the Final Special Recreation Management Area Plan/Plan Amendment. Furthermore, while there is no need at this time to issue regulations implementing ANILCA Section 811, the BLM will continue to strive to be consistent with other Federal land management agencies in this regard.

4. The Plan did not follow the cited Interagency Wild and Scenic Rivers Coordinating Council process to determine outstandingly remarkable values for the Delta Wild and Scenic River.

As noted in Section 2.2.1 of the Plan, the BLM followed the Interagency Wild and Scenic River Coordinating Council process and other relevant guidance in determining the River's outstandingly remarkable values. For each value considered, the BLM determined that the entire State of Alaska was the geographic region for which the value was evaluated and compared for purposes of determining its significance."

AUTHORITY: 43 CFR 1610.3-2(e)

Janine Velasco

Acting Deputy Director, Operations

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